

### **Remarks**

This election is made without prejudice to filing divisional applications directed to the subject matter of the non-elected groups.

The election of species is made with traverse. In the outstanding Office Action, dated November 16, 2005, Examiner further required an election of Group 1 to one of the species of either Fig. 1, Fig. 6, and Fig. 5. During a telephone conference with Applicant's representative on December 15, 2005, it was brought to the Examiner's attention that Fig. 5 showed the same embodiment as Fig. 1. Examiner agreed that Fig. 5 showed the same embodiment as Fig. 1. Examiner then specified that her intent was to restrict the group to a species of a drain tube with only one of a triangular lip, a sewing ring, or a rolled sheath. However, upon review of Figures 1, 5, and 6, it is clear that all three figures show each of a triangular lip (42), a sewing ring (44 and 44a), and a rolled sheath (36 and 36a). Applicant contends that the species shown in the Figures 1, 5, and 6 are not "independent and distinct" within the meaning of 35 U.S.C. 121. Accordingly, Examiner's restriction of Group 1 to a species of either Fig. 1, Fig. 5, or Fig. 6 is respectfully traversed.

It should be noted that Fig. 7 is also not "independent and distinct" from Figs. 1, 5, and 6. Fig. 7 shows a drain tube with an integral sewing ring. The integration of the sewing ring (44b) and the body (12) is not enough to make the embodiment of Fig. 7 patentably distinct from Figs. 1, 5, and 6. Fig. 7 overtly includes a sewing ring (44b) and a triangular lip (42). Fig. 7 is intended to be used with a rolled sheath, as in Figs. 1, 5, and 6. This is evidenced from the presence of the ridge (34) whose use is specifically for restraining the rolled bowel sheath in position (Specification: page 7, line 5; and page 11, line 8). Therefore, it is Applicant's contention that Figs. 1 and 5-7 are not

patentably distinct from each other and, therefore, should not have been restricted by the Examiner.

Claims 1-8, 10-17, 40-51, 53-59 and newly added claims 66-79 read on the elected species. Claims 1-17 and 40-59 are currently amended. Newly added claims 66-79 read on the elected species. Claims 69 and 78 are generic claims. Claims 9 and 52 stand withdrawn from consideration. No new matter has been added.

Claims 18-39 and 60-65 are cancelled. As such, no fee is due for the presentation of new claims 66-79.


Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

It is believed that this Response is being timely filed. In the event that any other extensions and/or fees are required for the entry of this Response, the Patent and Trademark Office is specifically authorized to charge such fee to Deposit Account No. 50-0518 in the name of Steinberg & Raskin, P.C.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

STEINBERG & RASKIN, P.C.

By: 

Martin G. Raskin  
Reg. No. 25,642

Steinberg & Raskin, P.C.  
1140 Avenue of the Americas  
15<sup>th</sup> Floor  
New York, New York 10036  
(212) 768-3800